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NEWS RELEASE

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Class Action Settlement May Benefit Certain Applicants

May Affect Suspension of Deportation Applications Made Before April 1, 1997

FALLS CHURCH, Va. – The Executive Office for Immigration Review (EOIR) announced that a notice was published in the *Federal Register* today regarding a settlement agreement in the *Barahona-Gomez v. Ashcroft* class action lawsuit. This agreement, effective January 17, 2003, may benefit eligible individuals who applied for suspension of deportation and had their immigration hearings within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit (which encompasses Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, and Washington) and whose application could have been adjudicated by the Immigration Courts or the Board of Immigration Appeals (BIA) between February 13, 1997, and April 1, 1997.

Barahona-Gomez v. Ashcroft challenged EOIR directives which prohibited Immigration Judges and the BIA from granting suspension of deportation during the period between February 13, 1997, and April 1, 1997. The directives were issued because of concern that the agency had nearly reached the 4,000 yearly cap on the number of persons who could be granted lawful permanent residency based on suspension of deportation.

One of the threshold requirements to be eligible for suspension of deportation is 7 years continuous physical presence in the United States. On September 30, 1996, a new law, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), changed how the 7 years' continuous physical presence in the United States could be accrued. Until the enactment of IIRIRA, the continuous physical presence in the United States could be accumulated up until the date the suspension application was adjudicated. IIRIRA restricted the continuous physical presence in the United States to accrue only up until the date the applicant was served with an Order to Show Cause (OSC) – the document that places the alien in deportation proceedings before EOIR. For cases within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, IIRIRA became effective on April 1, 1997. For cases outside the jurisdiction of the Ninth Circuit, IIRIRA was effective immediately.

Stopping the accrual of continuous physical presence in the United States at the time the OSC was served meant that some applicants – those who had met the pre-IIRIRA threshold for continuous

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physical presence eligibility **but had been served with an OSC within 7 years of entry,** and who were scheduled to have their application for suspension of deportation application adjudicated by EOIR **before** April 1, 1997 – were rendered ineligible due to the effect of the EOIR directives. The directives continued the cases to a date on or after April 1, 1997, the date IIRIRA – including the restriction regarding the accrual of continuous physical presence – became effective in the jurisdiction of the Ninth Circuit. On or after April 1, 1997, these particular individuals could not legally accrue the threshold 7 years continuous physical presence.

The settlement agreement remedies this adverse impact by allowing eligible class members – those who could have been granted suspension between February 13, 1997, and April 1, 1997 – to apply for "renewed suspension" under the standards that existed before April 1, 1997. The *Advisory Statement* that follows summarizes the specific criteria that individuals must meet in order to qualify for this relief, and the procedures for obtaining it.

The full *Settlement Agreement*, as well as the *Advisory Statement*, can be downloaded from EOIR's Web site at www.usdoj.gov/eoir/omp/barahona/barahona.htm. The *Federal Register* notice is available on the Internet at http://www.usdoj.gov/eoir/vll/fedreg/2002_2003/03-6691barahona.pdf.

ADVISORY STATEMENT

CLASS ACTION SETTLEMENT TO BENEFIT CERTAIN PERSONS WHO APPLIED FOR SUSPENSION OF DEPORTATION BEFORE APRIL 1, 1997

The Executive Office for Immigration Review (EOIR) B the federal agency that includes the Immigration Courts and the Board of Immigration Appeals B is issuing this Advisory Statement to inform the public about the settlement agreement in the *Barahona-Gomez v. Ashcroft* class action litigation.

This class action lawsuit challenged EOIR directives which prohibited immigration judges and the Board of Immigration Appeals from granting suspension of deportation during the period between February 13 and April 1, 1997. On April 1, 1997, a new law (Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (AIIRIRA@) section 309(c)(5)) took effect that made people ineligible for suspension if they had not been continuously physically present in the United States for a period of 7 years at the time that they were served with an Order to Show Cause (the document that begins deportation proceedings). Under the settlement, eligible class members who could have been granted suspension during the period between February 13 and April 1, 1997, before this new restriction took effect, will be given the opportunity to apply for suspension under the standards that existed prior to April 1, 1997.

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I. Class Members Eligible for Relief

The class in this case is limited to individuals who applied for suspension of deportation and whose hearings took place within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, encompassing the states of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, and Washington. The following categories of persons are eligible for relief under the settlement:

(1) individuals for whom an Immigration Judge (AIJ@) either reserved a decision, or scheduled a merits hearing on an application for suspension of deportation between February 13, 1997 and April 1, 1997, and the hearing was continued until after April 1, 1997 (except, as described below, in certain cases where the individual requested the continuance), and for which either:

(a) no IJ decision has been issued; or

(b) an IJ decision was issued denying or pretermitting suspension based on IIRIRA ' 309(c)(5), and either (i) no appeal was filed; (ii) an appeal was filed and the case is pending with the BIA, or (iii) an appeal was filed, and the BIA denied the appeal based on IIRIRA ' 309(c)(5); or

(c) the Immigration Judge granted suspension after April 1, 1997, and the INS filed a notice of appeal, motion to reconsider, or motion to reopen challenging the individual=s eligibility for suspension based on IIRIRA ' 309(c)(5).

Individuals in the categories listed above do <u>not</u> qualify for relief under the settlement if: (1) the continuance of the hearing was at the request of the individual; (2) the individual was represented by an attorney: and (3) the transcript of the hearing was prepared following an appeal and makes clear that the continuance was at the request of the respondent. In any case where EOIR determines that an individual is not eligible for relief under the settlement because of this restriction, EOIR will send written notice of this determination to the individual, and counsel. The class member will then have 30 days to file a claim disputing this determination. The settlement provides for a dispute resolution mechanism which must be used before the federal court can hear the issue. A stay of deportation will be in place if the dispute resolution mechanism is timely invoked;

(2) individuals whose cases were pending at the Board of Immigration Appeals (ABIA@) (either on direct appeal from the Immigration Judge decision, or on a motion to reopen) between February 13, 1997 and April 1, 1997, where the notice of appeal (or the motion to reopen) was filed on or before October 1, 1996, and which were, or would be (but for the settlement agreement), denied on the basis of IIRIRA 309(c)(5), whether or not the decision of the BIA denying suspension solely on the basis of IIRIRA ' 309(c)(5) has already been issued or not;

(3) individuals whose cases were taken under submission by an Immigration Judge following a merits hearing before February 13, 1997, where no decision issued until after April 1, 1997;

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(4) individuals for whom the Immigration Judge denied or pretermitted suspension between October 1, 1996 and March 31, 1997, on the basis of IIRIRA ' 309(c)(5), and the individual filed a notice of appeal with the BIA; and

(5) individuals for whom the Immigration Judge granted suspension of deportation before April 1, 1997 and the INS appealed based only on IIRIRA ' 309(c)(5) or IIRIRA ' 309(c)(7).

Even if they otherwise qualify under one of the above categories, class members are not eligible for benefits under the Settlement if they have already become lawful permanent residents (LPRs), or if they already have had or will have their cases reopened for adjudication or re-adjudication of their claims for suspension of deportation without regard to Section 309(c)(5) of IIRIRA, following a remand from the United States Court of Appeals for the Ninth Circuit or the BIA or following an order by the BIA or an immigration judge reopening their cases.

II. Procedures for Obtaining Relief Under the Settlement

Under the settlement, eligible class members (as defined above) will be eligible to apply for and be granted Arenewed suspension@ which means the relief of suspension of deportation, as it existed on September 29, 1996, before amendment by IIRIRA or any subsequent statute. As part of the process of applying for renewed suspension, class members will have the opportunity to present new evidence of the hardship they would face were they to be deported.

The procedures by which such eligible class members may apply for and be granted such relief depend upon the status of the case. In cases currently pending before an Immigration Judge, EOIR will send written notice to eligible class members of the opportunity to apply for relief under the settlement. In cases of eligible class members currently pending before the BIA, the BIA will remand the case to the Immigration Judge to schedule a hearing for renewed suspension. In those cases where an Immigration Judge previously granted suspension to a class member, and the INS appealed based only on IIRIRA ' 309(c)(5) or (c)(7), the BIA will dismiss the appeal and thereby reinstate the Immigration Judge's decision granting suspension.

In cases of eligible class members where the BIA or an Immigration Judge denied suspension and no appeal was filed, EOIR will on its own motion reopen the case to allow the class member to apply for suspension. In such cases EOIR will send written notice to the class member=s last known address. If the class member subsequently fails to appear for a noticed hearing, the case will be administratively closed for a period of time after which the case could be recalendared and an appropriate order issued, including an <u>in absentia</u> order of deportation which could, in turn, be subject to reopening for lack of notice.

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Class members who are subject to final deportation orders but are eligible to apply for renewed suspension under the settlement may file a motion to reopen their case to apply for renewed suspension. This will be necessary in cases where the BIA or Immigration Judge will not, on their own, be reopening the case. Principally this will be in cases where a motion to reopen has already been denied. This motion is not subject to the normal time and number limitations on motions to reopen, and this motion does not require a filing fee. However, the motion to reopen must be filed within 18 months of the date that this Advisory Statement is published in the Federal Register (this period will be extended for six months if at least one class member files such a motion within the last six months of the 18-month period).

A stay of deportation will be in effect for class members who are eligible for relief under the settlement who are subject to final orders of deportation. The stay will expire upon the reopening of a class member=s case under the terms of the settlement agreement. The stay is also dissolved 30 days after any individual receives written notice that EOIR has determined that he or she is not eligible for relief under the settlement, unless the individual notifies EOIR within the 30-day period that he/she is invoking the settlement=s dispute resolution procedure.

An eligible class member who files a motion to reopen under the settlement may also request a stay of deportation from EOIR, and the filing of such a stay request will cause such individual to be presumed to be an eligible class member for purposes of the stay of deportation; however such presumption and stay can be dissolved by order of the EOIR in not less than seven (7) days if the individual has not filed prima facie evidence of eligibility for relief under the settlement by that time.

This notice is only a summary of the provisions of the settlement agreement. The full agreement is reproduced on the EOIR website at www.usdoj.gov/eoir/omp/barahona/barahona.htm**.**

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